

Notice of Allowability

Application No.

09/680,172

Examiner

Matthew s Gart

Applicant(s)

SWIERCZEK, REMI

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Remarks (11/12/2004), AF/D (11/12/2004, AF/D (12/3/2004)).
2. ☒ The allowed claim(s) is/are 13 and 20.
3. ☒ The drawings filed on 13 May 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

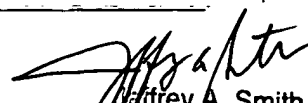
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 12/3/2004.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Jeffrey A. Smith
Primary Examiner

DETAILED ACTION

Claims 13 and 20 are pending in the instant application.

Reasons For Allowance

The following is an examiner's statement of reasons for allowance:

Claim 13 recites a process of identifying music comprising, *inter alia*, the consumer recording a segment of music that is audible to the consumer using a portable communication device, and the consumer transmitting said recorded musical segment from said portable communication device into a central processing unit.

The prior art of record neither anticipates nor fairly and reasonably teaches this combination of structure.

Pocock (U.S. Patent No. 6,314,577) neither anticipates or fairly and reasonably teaches a process of identifying music comprising, the consumer recording a segment of music that is audible to the consumer using a portable communication device, and the consumer transmitting said recorded musical segment from said portable communication device into a central processing unit. Pocock is merely devoted to a method that enables listeners and viewers of a broadcast to access additional information associated with the broadcast.

It is observed that none of the references of record, either alone or in combination with any other reference of record teach the consumer recording a segment of music that is audible to the consumer using a portable communication device.

Art Unit: 3625

Claim 20 recites a method for purchasing a music item comprising, inter alia, the following steps: the consumer directing a microphone of a portable communication device towards the source of audible music, and the consumer activating the portable communication device to transmit a segment of the audible music to the remotely located music identification/purchasing system.

Pocock (U.S. Patent No. 6,314,577) neither anticipates or fairly and reasonably teaches a method of the consumer directing a microphone of a portable communication device towards the source of audible music, and the consumer activating the portable communication device to transmit a segment of the audible music to the remotely located music identification/purchasing system. Pocock is merely devoted to a method that enables listeners and viewers of a broadcast to access additional information associated with the broadcast.

It is observed that none of the references of record, either alone or in combination with any other reference of record teach the consumer directing a microphone of a portable communication device towards the source of audible music using a portable communication device.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Examiner Comments - Oath/Declaration

The Declaration pursuant to 37 CFR 1.131 filed on November 12, 2004 in conjunction with the Supplemental Declaration filed on December 3, 2004 under 37 CFR 1.131 is sufficient to overcome the Kenyon (U.S. Patent Application Publication 2002/0023020 A1) reference.

The Supplemental Declaration filed on December 3, 2004 was filed in order to show evidence of diligence from a time just prior to September 21, 1999 up to the constructive reduction to practice of the instant invention (provisional application 60/158,087 filed October 7, 1999).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

KR2001010778A, Yang, J.D., July 22, 1999, discloses a method for playing music files in a portable wireless terminal.

Any inquiry concerning this communication should be directed to Matthew Gart whose telephone number is 703-305-5355. This examiner can normally be reached Monday-Friday, 8:30AM-5:30PM EST.

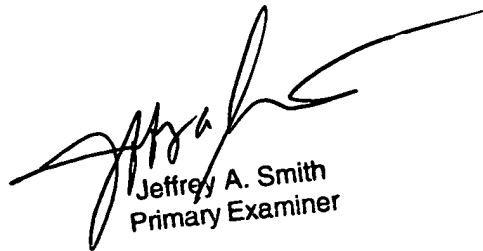
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone

Art Unit: 3625

numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

MSG
Patent Examiner
December 3, 2004



Jeffrey A. Smith
Primary Examiner